



U.S. FISH AND WILDLIFE SERVICE
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New Service Manual chapter identifying the authorities, objectives, and responsibilities for the FWS's Migratory Bird Program.

DEPUTY DIRECTOR

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Chapter 1 Policies and Responsibilities of the Migratory Bird Program

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1.1 What is the purpose of this chapter? This chapter identifies the authorities, objectives, and responsibilities of the Fish and Wildlife Service's Migratory Bird Program.

1.2 What are the goals and strategies of the Migratory Bird Program?

A. We have the legal mandate and the trust responsibility to maintain and enhance migratory bird populations and habitats for the continued enjoyment of the American public. We are authorized by more than 25 primary conventions, treaties, and laws, many of which have authorities that extend beyond the borders of the United States, to ensure the conservation of more than 800 species of migratory birds. The Migratory Bird Program, comprised of the Divisions of Migratory Bird Management and Bird Habitat Conservation, leads policy development, strategic planning, program implementation, and evaluation of actions designed to conserve migratory birds and their habitats.

B. When developing a strategic plan for migratory birds, the Migratory Bird Program will focus its efforts on the following goals:

(1) Protect, restore, and manage migratory bird populations to ensure their ecological sustainability and to increase the socioeconomic benefits reaped from those populations.

(2) Protect, restore, and manage migratory bird habitats to ensure long-term sustainability of all migratory bird populations.

(3) Improve hunting, bird watching, and other bird-related experiences and opportunities, and increase awareness of the value of migratory birds and their habitats for their intrinsic, ecological, recreational, and economic significance.

C. The Migratory Bird Program will develop 3-year action plans that describe specific short-term, priority tasks to accomplish its goals. We will achieve these overarching goals by implementing strategies in the following five areas of responsibility:

(1) Population monitoring, assessment, and management

(2) Habitat conservation

(3) Permits and regulations

(4) Consultation, cooperation, and communication

(5) Recreation

D. Through the Migratory Bird Program, we collaborate with other Federal agencies, States, tribes, and non-governmental organizations to manage migratory bird species using partnerships that deliver local, regional, national, and international management plans that conserve habitat for migratory birds and other wildlife. Cooperative efforts include the U.S. Shorebird Conservation Plan, the North American Waterbird Conservation Plan, the North American Waterfowl Management Plan (NAWMP) and its associated joint ventures, and Partners in Flight. These plans are all components of the North American Bird Conservation Initiative (NABCI), an effort to align the avian conservation community to implement bird conservation through regionally based, biologically driven, landscape-oriented partnerships across the North American continent, including Canada and Mexico.

1.3 Who is responsible for administering the Migratory Bird Program?

A. The **Assistant Director, Migratory Birds** has oversight responsibility and the lead role for policy development and coordination for implementing the Migratory Bird Program. The Assistant Director may exercise the authority of the Director regarding permits, except for permits that allow lethal take of bald or golden eagles (see [034 FW 6](#)). The Assistant Director serves as the Chair of the Service's Regulation Committee, which makes recommendations to the Director about annual hunting regulations.

B. The **Chief, Division of Migratory Bird Management** has the lead responsibility for development of policies, regulations, budget, and other directives for the conservation of migratory bird populations. The Chief shares responsibility with other Service permit programs for development, operation, and maintenance of the Service Permit Issuance Tracking System (SPITS).

C. The **Chief, Division of Bird Habitat Conservation** has the lead responsibility for development of policies, regulations, budget, and other directives for the North American Wetlands Conservation Act grants program, the Neotropical Migratory Bird Conservation Act grants program, the Federal Duck Stamp and Junior Duck Stamp programs, and the North American Waterfowl Management Plan.

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D. Regional Directors/Manager, California/Nevada Operations Office (CNO) are responsible for administration of the migratory bird program in their respective Regions/CNO. This includes administering all permitting activities, except lethal take of bald or golden eagles, the authority for which has not been delegated from the Director (See [032 FW 7](#)). Regional Directors/CNO Manager make the final determinations for any appeals for denied permits in the Service.

E. The Assistant Regional Directors/Assistant Manager, Migratory Birds are responsible for the administration of the migratory bird program in their respective Regions/CNO, as delegated by the Regional Director/CNO Manager. The Assistant Regional Director/Assistant Manager supervises the Regional Migratory Bird Division Chief.

F. The Chiefs, Regional/CNO Divisions of Migratory Birds are responsible for the operational management of Regional/CNO Migratory Bird programs. They supervise Regional/CNO Division staff, administer budgets, and serve as senior Regional/CNO experts on all operational facets of the Migratory Bird Program. The components of the Migratory Bird Program vary by Region. Regions 1, 2, 4, 5 and 7 include the functions of Bird Habitat Conservation (BHC) in the Division, while Regions 3 and 6 maintain different BHC organizational structures reporting directly to the Assistant Regional Director. The Chiefs oversee their respective Region in the annual establishment of frameworks for national migratory bird hunting regulations, and some serve as the Regional experts on migratory game bird management.

G. The Chiefs (or Coordinators), Nongame Migratory Birds serve as the Regional experts on land birds, waterbirds and shorebirds and their conservation. They are responsible for coordinating with various partners to develop management plans. They administer research and management grants, participate in the biological review of migratory bird permits, and supervise subordinate staff. They serve as Regional experts on all matters pertaining to the science and management of migratory nongame birds.

H. The Chiefs, Bird Habitat serve as the Regional experts on migratory bird habitat conservation. They are responsible for planning and delivering habitat conservation for the major national and continental

bird conservation plans through a partnership of Federal, Regional, and State agencies and organizations focused on the conservation of migratory bird species.

I. The Chiefs, Permit Examiners are responsible for administering the legal review and disposition of permits that allow permit holders to undertake certain activities with migratory birds which would otherwise be prohibited by the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. Permit examiners evaluate individual or institutional applications for permits, prepare the appropriate response for issuance or denial of permits, maintain confidential files of all Regional permit holders, and supervise subordinate personnel. Most Regional Permit Examiners have delegated signatory responsibility for issuing permits. They serve as the Regional experts on legalities associated with migratory bird permits.

J. Flyway Representatives are employees of the DMBM whose primary responsibility is to serve as liaisons between the Service and a Flyway Council (including its technical committees) and to provide technical information relevant to the process for developing hunting regulations. The Flyway Council is an organization of State and provincial wildlife agencies in each of the four administrative waterfowl flyways; the Council allows States to participate fully in the formulation of recommendations on annual hunting regulations. There is one Flyway Representative for each flyway.

1.4 What does the Division of Migratory Bird Management (DMBM) do?

A. The DMBM coordinates and conducts bird surveys, supports research, sets hunting regulations, and issues permits in accordance with the Migratory Bird Treaty Act (MBTA) and the Bald Eagle and Golden Eagle Protection Act.

B. The DMBM coordinates shorebird-related activities. These activities include assisting Service Regions with the development and implementation of shorebird monitoring efforts, supporting shorebird management training, and identifying and designating sites for the Western Hemisphere Shorebird Reserve Network. Our Shorebird Coordinator leads the development and implementation of the U.S. Shorebird Conservation Plan and the implementation of regional conservation plans.

C. The DMBM is also engaged in a variety of activities to ensure that colonial-nesting waterbird populations

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remain healthy, including monitoring nesting colonies, conducting or funding research, and restoring nesting habitats. Our Waterbird Coordinator is responsible for helping to develop and implement the North American Waterbird Conservation Plan.

D. The DMBM supports the Partners in Flight National Coordinator. The coordinator oversees the partnership of Federal agencies, State agencies, non-governmental organizations, industry, academia, and individuals in the United States that work for the conservation of more than 400 species of land birds in the Western Hemisphere. The DMBM coordinates preparation of species assessment, planning, monitoring, research, land management recommendations, and various needs assessments for all lands in the United States, and in cooperation with international partners, for lands in Canada, Mexico, the Caribbean, and Central America.

1.5 What does the Division of Bird Habitat Conservation (DBHC) do?

A. The DBHC coordinates and implements the North American Waterfowl Management Plan in the United States. The DBHC coordinates efforts with the governments of Canada and Mexico through interactions with the North American Waterfowl Management Plan Committee, other Fish and Wildlife Service program areas, joint ventures, and a variety of public and private conservation agencies and organizations. The Chief of the DBHC serves as the U.S. co-chair of the Waterfowl Management Plan Committee.

B. The DBHC provides coordination and program guidance for migratory bird joint ventures on a national level. These are regional-scale, self-directed partnerships involving Federal, State, and local government agencies; corporations; tribes; individuals; and a wide range of non-governmental organizations. A joint venture is directed by a management board consisting of representatives from agencies, organizations, and other interests vested in the conservation of fish and wildlife habitat within the Region of the joint venture. In many cases, the Service funds the Joint Venture Coordinator. Joint ventures deliver science-based, on-the-ground conservation in support of the national and international bird conservation plans. Joint venture planning provides conservation partners with the necessary products for strategic, science-based conservation action, i.e., population goals and quantitative habitat objectives on regional and local scales, management alternatives prioritized by their importance and likelihood of success, and evaluation measures to gauge results and improve performance.

C. The DBHC is responsible for staffing the U.S. Committee for the NABCI. The committee has 12 members, chaired by the Director of the Service, and works on nine broad action items related to bird conservation. These actions include national coverage of regional partnerships (joint ventures); sustainable funding sources for upland bird conservation and management; increased capacity for Federal, State, and international conservation; coordination with private lands incentive programs; and effective and efficient science support for bird conservation.

D. The DBHC is responsible for staffing and coordinating the Tri-national NABCI Committee, a nine member board consisting of three people each from the United States, Mexico, and Canada. The focus of the committee is to improve coordination and to provide opportunities for bird conservation to work more effectively across country borders.

E. The DBHC provides administrative support on a national level to the North American Wetlands Conservation Act, a grant program for wetlands conservation projects in the United States, Canada, and Mexico. It also provides administrative support on a national level to neotropical migratory bird conservation initiatives in the United States, Latin America, and the Caribbean through the Neotropical Migratory Bird Conservation Act.

F. The Federal Duck Stamp program, one of the most popular and successful conservation programs ever initiated, is administered through the DBHC. Funds collected through the sale of duck stamps to all waterfowl hunters go directly toward acquisition of wetland and wildlife habitat for inclusion in the National Wildlife Refuge System.

1.6 What are the authorities for the Program?

A. Migratory Bird Treaty Act, 16 U.S.C., §§ 703-712, (1918), as amended.

B. Convention for the Protection of Migratory Birds with Great Britain on behalf of Canada, 39 Stat. 1702; TS 628, (1916).

C. Convention for the Protection of Migratory Birds and Game Mammals with Mexico, 50 Stat. 1311; TS 912, (1936), as amended.

D. Convention Between the United States and Japan for the Protection of Migratory Birds and Birds in

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Danger of Extinction, 25 UST 3329; T.I.A.S. 7990, (1972).

E. Convention Between the United States and the U.S.S.R. Concerning the Conservation of Migratory Birds and Their Environment, T.I.A.S. 9073, (1976).

F. Bald Eagle and Golden Eagle Protection Act, 16 U.S.C., §§ 668-668.d, (1940), as amended.

G. Neotropical Migratory Bird Conservation Act, 16 U.S.C., §§ 6101-6109, (2000).

H. North American Wetlands Conservation Act, 16 U.S.C., §§ 4401-4414, (1989), as amended.

1.7 What is the Migratory Bird Treaty Act?

A. Jurisdiction. The Migratory Bird Treaty Act (MBTA) implements various treaties and conventions between the United States and Canada, Japan, Mexico and the Russian Federation for the protection of migratory birds. Under the MBTA, taking, killing or possessing migratory birds is unlawful. The MBTA applies to activities conducted within the United States (including import to and export from) by any person; business; organization; institution; and local, State, or Federal agency. The United States includes all States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

B. Responsibilities. We are responsible for administering, overseeing, and enforcing the conservation provisions of the MBTA, which includes population management (e.g., monitoring and assessment), habitat protection (e.g., acquisition, enhancement, and modification), international coordination, development and enforcement of regulations, and development and implementation of permit policy.

C. Prohibitions. Unless permitted by regulations, the MBTA makes it unlawful to pursue, hunt, take, capture or kill; attempt to take, capture or kill; possess; offer to or sell, barter, purchase; deliver or cause to be shipped, exported, imported, transported, carried or received any migratory bird, part, nest, egg or product, manufactured or not. Subject to limitations in the MBTA, the Secretary of the Interior may adopt regulations determining the extent to which, if at all, hunting, taking, capturing, killing, possessing, selling, purchasing, shipping, transporting or exporting of any migratory bird, part, nest, or egg will be allowed,

having regard for temperature zones, distribution, abundance, economic value, breeding habits, and migratory flight patterns. Regulations are effective upon Secretarial approval.

D. Violations/Penalties. A person, association, partnership, or corporation that violates the MBTA or its regulations is guilty of a misdemeanor and subject to a fine of up to \$500, up to 6 months in jail, or both. Anyone who knowingly takes a migratory bird and intends to, offers to, or actually sells or barbers the bird is guilty of a felony, with fines of up to \$2,000, up to 2 years in jail, or both. (Permissible fines are increased significantly by the Sentencing Reform Act of 1984, as amended in 1987.)

E. Permits. We administer a permit program to regulate certain activities other than hunting that involve migratory birds. We issue permits to qualified applicants for the following types of activities related to migratory birds: import/export, scientific collecting, taxidermy, waterfowl sale and disposal, management and control of resident Canada geese, special purpose (educational use, salvage, captive-bred migratory game bird propagation, etc.), falconry, raptor propagation, rehabilitation, and control of depredating migratory birds. The Bird Banding Laboratory of the U.S. Geological Survey issues bird banding permits. The regulations governing permits are located at 50 CFR 21.

F. Hunting Regulations. Regulations governing the hunting of migratory birds are promulgated annually to establish open seasons and are changed periodically to reflect status of populations or environmental conditions. Annual regulations are established at 50 CFR 20, subpart K. (See Part 723 for further details.)

G. Species. The MBTA covers migratory bird species protected under international treaties between the United States and Great Britain for Canada (1916), Mexico (1936), Japan (1972), and the Russian Federation (1976). Migratory birds protected under the MBTA are listed in 50 CFR § 10.13.

H. Scope of Treaties. Each of the treaties protects selected species of birds, specifies closed seasons for hunting game birds, and permits subsistence harvest for indigenous populations of Alaska for their nutritional and other essential needs during established seasons. The treaties, with the exception of the treaty with Mexico, also address take of migratory birds for scientific and propagation purposes.

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1.8 What is included in the Migratory Bird Treaty with Canada? This 1916 treaty adopted a uniform system of protection for certain species of birds that migrate between the United States and Canada to assure the preservation of species either harmless or beneficial to humans. It specifies dates for closing hunting seasons on migratory birds and prohibits hunting insectivorous birds. The treaty was amended in 1995 to establish a legal framework for the subsistence take of birds in Alaska and northern Canada by Alaska natives and aboriginal people in Canada.

1.9 What is included in the Migratory Bird and Game Mammal Treaty with Mexico? This 1936 treaty adopted a system for the protection of certain species of birds that migrate between the United States and Mexico. It allows, under regulation, the rational use of certain migratory birds; provides for enactment of laws and regulations to protect birds by establishing closed hunting seasons and refuge zones; prohibits killing of insectivorous birds, except under permit when harmful to agriculture; and provides for enactment of regulations on transportation of game mammals across the U.S.-Mexican border. The treaty was amended March 10, 1972 (23 U.S.T. 260; T.I.A.S. 7302) to add 32 additional families of birds, including eagles, hawks, owls, and the Corvidae family. The treaty was further amended in 1997 to establish a legal framework for the subsistence take of birds by indigenous inhabitants.

1.10 What is included in the Migratory Bird Treaty with Japan? This 1972 treaty provides for the protection of species of birds that are common to both countries or that migrate between the two countries. The treaty provides for enhancement of habitat, exchange of research data, and regulation of hunting.

1.11 What is included in the Migratory Bird Treaty with the Russian Federation? This 1976 treaty provides for the protection of species of birds that migrate between the United States and the Russian Federation or that occur in either country and "have common flyways, breeding, wintering, feeding or molting areas." It also encourages actions to identify and protect important habitat against pollution, detrimental alteration, and other environmental degradation, and to work together to protect migratory birds identified as being in danger of extinction. This international agreement remains in force for 15 years and will thereafter be renewed automatically on an annual basis subject to termination by either party.

1.12 What is included in the Bald and Golden Eagle Protection Act?

A. Responsibilities. The Bald and Golden Eagle Protection Act (BGEPA) was enacted in 1940 to protect bald eagles and amended in 1962 to include golden eagles. We are responsible for administering, overseeing, and enforcing the BGEPA. These activities include eagle population management (e.g., monitoring and assessment), habitat protection (e.g., acquisition, enhancement, and modification), international coordination, development and enforcement of regulations, and development and implementation of permit policy. The BGEPA applies to activities conducted within the United States (including import to and export from) by any person; business; organization; institution; and local, State or Federal agency.

B. Prohibitions. The BGEPA prohibits the take; possession; sale; purchase; barter; offering to sell, purchase, or barter; transport; import and export of bald and golden eagles without a permit. The act defines "take" to include: pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb. The prohibitions apply to live birds, dead specimens and parts thereof, nests, and eggs.

C. Violations/Penalties. A violation of the BGEPA can result in a fine of \$100,000 (\$200,000 for companies), imprisonment for one year, or both for a first offense. Penalties increase significantly for additional offenses, and a second violation of the Act is a felony.

D. Permits. The BGEPA says that the Secretary of the Interior may issue permits for take, possession, and transportation of eagles for scientific or exhibition purposes, the religious purposes of Indian tribes, and the protection of wildlife, agricultural or other interests; possession and transportation of golden eagles for falconry if the eagles are taken because of depredations on livestock or wildlife; and take of golden eagle nests that interfere with resource development or recovery operations. Accordingly, we issue the following types of permits for activities involving eagles: scientific collecting, exhibition, Native American religious and cultural use, depredation, falconry (golden eagles only), and take of golden eagle nests.